

MAY 27 1992

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NO. 91-1657

**IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1991**

Charlene LEATHERMAN, et al.,
Petitioners
V.

**TARRANT COUNTY NARCOTICS
INTELLIGENCE AND COORDINATION
UNIT, et al.,
Respondents**

**PETITIONERS' REPLY MEMORANDUM TO
BRIEFS OF RESPONDENTS IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

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PETITIONERS' REPLY TO RESPONDENTS'
REASONS FOR DENIAL OF WRIT

A) Respondents' Suggestion of Mootness

Respondent City of Grapevine in its Brief in Opposition, at page 7, asserts that a judgment entered in the United States District Court for the Northern District of Texas on April 21, 1992, in favor of two police officers who were involved in only one of the two searches in question, "renders moot the allegations of municipal liability for failing to adequately train the officers." The judgment to which Respondent City of Grapevine refers, Andert v. Bewley, No. 4-91-68-A (N.D. Tex), (notice of appeal filed May 19, 1992) does not, for the reasons listed below, render moot the Questions Presented in the instant Petition for Writ of Certiorari:

1) The judgment in Andert v. Bewley considered and decided allegations solely against two police officers who participated in the second of the "two separate incidents," Pet. App. at page 3a, made the basis of Petitioners complaint in Leatherman v.

T.C.N.I.C.U., 755 F.Supp. 726 (N.D. Tex. 1991), aff'd., 954 F.2d 1054 (5th Cir. 1991), pet. for cert. pending, (U.S. No. 1657). Petitioners Charlene, Kenneth and Travis Leatherman are not parties to the action in Andert v. Bewley, supra, and their claims underlying the present Petition for Certiorari were not considered or decided in any respect by the judgment entered April 21, 1992 in Andert v. Bewley;

2) Moreover, the judgment entered in Andert v. Bewley, supra, did not reach the merits of the constitutional claims of Petitioners Gerald Andert, Donald Andert, and Kevin, Jerri, Travor, Shane and Pat Lealos. The April 21, 1992, judgment in Andert v. Bewley rests on a directed verdict in favor of Defendant Traweck based on the District Court's assumption that "[n]o liability was sought by the complaint to be imposed on . . . Traweck for the conduct of other persons involved involved in the execution of the search warrant," id at page 5; and as to Defendant Bewley, a jury verdict based on qualified immunity finding that Defendant

Bewley's alleged unprovoked clubbing of Petitioner Gerald Andert was not "clearly excessive," "grossly disproportionate to the need for action," "inspired by malice" or "an abuse of official power that shocks the conscious."

Unlike the situation which the Supreme Court confronted in City of Los Angeles v. Heller, 475 U.S. 796 (1986), wherein claims against a municipality were rendered moot by a jury verdict finding no constitutional violation by the individual officers involved, the judgment in favor of the individual officers in Andert v. Bewley did not reach the question of whether either officer, or indeed any of the estimated 14 other police officers executing the search warrant at the Andert/Lealos residence, inflicted or caused Petitioners to "suffe[r] a constitutional injury at the hands of the individual police officer[s]." City of Los Angeles v. Heller, 475 U.S. at 799.

The claims underlying the instant petition for Writ of Certiorari are not moot, and the Petition

should be granted to decide the Questions Presented therein.

CONCLUSION

For the foregoing reasons, Petitioners pray that a Writ of Certiorari issue to review the February 28, 1992 Judgment and Opinion of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,



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